

1 Q Oh, I thought you just told me you don't remember
2 what he said?

3 A I remember your question right now --

4 Q . Okay.

5 A -- and, and my recollection was you were describing
6 a specific point in time. You said, "Mr. McCallister, what
7 happened specifically when you install a transmitter and after
8 you're finished?" and --

9 Q That's correct.

10 A -- Mr. McCallister was, was describing, to my
11 recollection, was describing, "I install a transmitter. I
12 turned it on and I go out and check and it's okay."

13 Q That's right. But he also said he was responsible
14 and still is to this day for their RF system, did he not, Mr.
15 Peters?

16 A Yes.

17 Q Okay. And I also asked him, "Did you need or use 24
18 hours a day a repeated sequence of tones to test the system?"

19 A I don't recall that question.

20 Q It's a --

21 A It doesn't make any difference. He said -- he
22 probably said no, he didn't.

23 Q Well, and you know why he said no, don't you?

24 A You tell me.

25 Q No. You know why he said that?

1 JUDGE CHACHKIN: You're asking the questions.

2 What's your question?

3 BY MR. JOYCE:

4 Q I'm asking. You know why his testimony would be
5 that you don't need 24 hours a day tying up a shared frequency
6 to send out repeated tones? You know why, don't you, Mr.
7 Peters?

8 A Mr. Joyce, he answered that he didn't need it.

9 Q I'm asking you. You're the expert, Mr. Peters.

10 A Mr. Joyce, he answered that he didn't need it.

11 Q I'm asking you why he would not need that?

12 A Because he was not responsible for providing
13 guaranteed coverage or determining what the coverage areas
14 were from those transmitters.

15 Q Mr. Peters, isn't it true that he didn't need that
16 because that's not a standard test --

17 A No, no.

18 Q -- when you put up a paging system?

19 A Not at all. He didn't need that because that was
20 not his job. His job was to install a transmitter and make
21 sure that it put out RF energy and, if I recall, that's what
22 he said. And then when you started getting into the issue of
23 tests and all that and asked him if he needed 24 hours worth
24 of tests to make that determination, he said, "No, I don't
25 need that," and he didn't need that. All he needed to find

1 out was that that transmitter was putting out the power that
2 it was supposed to, that the antenna was up properly and
3 oriented properly and that it was putting out energy. The
4 rest of the test of that system were for others to decide and
5 do.

6 Q Mr. Peters, when we're talking -- just so we
7 clarify, when we're talking about 24 hour a day repeated tones
8 --

9 A Yes, sir. I didn't hear anything --

10 Q -- the testing, the testing that I recall the FCC
11 engineers referring to was not a pager going off for one
12 minute and then another pager going off eight minutes later
13 during a 24 hours period, but it's my recollection the FCC
14 engineers were saying this was constant communications seizing
15 that shared channel for hours on end. Isn't that correct?

16 A No. I don't remember that at all.

17 Q Huh?

18 A No, not at all.

19 Q Okay.

20 A That's contrary to what I recall about all --
21 everyone's testimony.

22 Q Didn't they say -- I appreciate your qualification
23 -- your clarification. I misspoke. They did say that some of
24 those transmissions were for 20 to 40 seconds?

25 A Yes. That was --

1 Q And -- that's correct?

2 A Yes.

3 Q And that -- during that time RAM communications
4 could not go out at all? Correct?

5 A That's what we're all hoping for, yes. The channel
6 sharing was in place and operational and that's correct.

7 Q Yes. But they're using the channel just for testing
8 at that time? Correct?

9 A Yes.

10 Q Right. While RAM is trying to get out legitimate
11 pages? You have no reason to doubt that are legitimate, I
12 presume, Mr. Peters?

13 A I, I think that RAM probably does not put out too
14 many illegitimate pages.

15 Q Okay. In that 24 hour sequence we have not had any
16 testimony anybody yet from Capitol, Mr. Peters, other than
17 your speculations, no one has told us what legitimate purpose
18 that testing has served, have they?

19 A You asked me a question which included -- Mr. Joyce,
20 you asked me a question which included 24 hour paging. I've
21 only heard in this testimony where 24 hours might have
22 occurred one time. I mean --

23 Q Let me, let me try to break it down. If I'm
24 confusing you, Mr. Peters, I apologize. Mr. Walker on the
25 stand said that Sunday, Monday, Tuesday, Wednesday -- I

1 counted the days off just like that. Four days prior to
2 visiting Capitol while they were out in the field they heard
3 the same sequence of three tones, beep, beep, beep, going off
4 the best that they could figure morning, noon and at least
5 midnight? Correct?

6 A I heard Mr. Walker state one night to midnight and
7 it could have been the same day that Mr. Harrison was talking
8 about. I don't know.

9 Q But he testified that he heard that throughout that
10 week prior to visiting Capitol? Correct?

11 A He heard three pairs of two-tone pages repeated --

12 Q Okay.

13 A -- which sounded nothing like your beep, beep, beep.

14 Q Throughout the week?

15 A Yes.

16 Q Okay. And that testing stopped when?

17 A I, I believe that it stopped Thursday or Friday of
18 the week that they were there. I don't recall which.

19 Q He testified that it stopped just when they visited
20 Capitol's offices, did he not?

21 A You mean during the visit?

22 Q Yes.

23 A During the visit? Yes. I think that's right.

24 Q Okay. We've gone through this just so that we're
25 understanding what testing we're talking about and I'm going

1 to ask you because you were here all week did you hear anybody
2 from Capitol explain how and why that was a legitimate test?

3 A I don't recall any testimony.

4 Q You've reviewed these records it says in your direct
5 testimony. You've poured over all this stuff. You've
6 rendered an expert opinion. As you did all that, did you see
7 any document or any evidence that would explain to you how or
8 why that would have been legitimate testing?

9 A No.

10 Q Okay. And here's the punch line, Mr. Peters. If in
11 your expert opinion on a shared frequency where -- although
12 the FCC doesn't say how much air time you're supposed to have,
13 it's kind of up to the parties to share it. Isn't it true
14 that if one person is engaged in excessive testing, not
15 sending out pages, that they would be causing interference
16 while the -- to the other person that is trying to get out
17 legitimate pages?

18 A The answer to your question is yes.

19 Q Thank you, Mr. Peters. I mean, even back in the old
20 days that Mr. Hardman went over with you when RCCs were
21 sharing frequencies, the same would apply then if one of those
22 13 carriers engaged in excessive testing on a frequency? You
23 bet your boots that the other guys would be upset about that,
24 wouldn't they?

25 A Well, since you're talking about -- you asked me a

1 question about the old days? Let's talk about the old days.

2 Q Could you just answer my question, Mr. Peters?

3 A No. The answer -- there is no specific answer, Mr.
4 Joyce.

5 Q Would they be upset if there was excessive testing
6 on a shared frequency?

7 A Of course.

8 Q I thought the answer was obvious, Mr. Peters. Thank
9 you. And wouldn't that make it difficult to get your
10 legitimate pages out if you're engaged in excessive testing?

11 A If excessive testing existed, yes.

12 Q Thank you.

13 A So if you're a commercial operator and you're trying
14 to really stick it to your competitor wouldn't that be one way
15 of doing it, Mr. Peters?

16 A Possibility, yes.

17 Q Thank you.

18 JUDGE CHACHKIN: How do you define excessive?

19 MR. PETERS: That's -- which we've been skirting
20 that issue for almost two weeks now, Your Honor. I don't
21 consider the amount of paging testing that was going on at the
22 time to be anywhere close to being excessive. The issue of
23 excessive, you know, is going to have to be left to somebody
24 else to decide. But sending out three repeated two-tone pages
25 is certainly not excessive in my view and I've done it

1 hundreds of times in testing a system. I mean, I -- I'm a
2 little shocked at sitting here thinking that things that we've
3 been doing for years have been excessive and it's never, ever
4 occurred to us that that's excessive testing. It only became
5 an issue in my, in my view in this case.

6 JUDGE CHACHKIN: Mr. Joyce, you repeatedly
7 questioned this witness about excessive testing but unless we
8 get a definition of what this witness means by excessive, the
9 record is not complete. You used the word excessive. We have
10 to have a definition of the witness since you asked questions
11 about excessive testing. So I want to know what the witness
12 meant when he answered your questions about excessive testing.

13 BY MR. JOYCE:

14 Q Testing has a purpose, does it not, Mr. Peters?

15 A Yes, it does.

16 Q All right. What's the purpose of testing?

17 A There are many different purposes for testing, but
18 in general and in a paging system the preponderance of testing
19 occurs in trying to determine and verify the reliability of
20 your paging service, the reliability of your paging service.

21 Q So you, you identify what are the optimum
22 characteristics of a paging service and then you determine
23 whether or not can meet those characteristics. Is that --

24 A No, not --

25 Q Is that fair to say?

1 A No, not even close.

2 Q All right. Give me your definition then of testing.

3 A No. I thought you were talking about optimizing?

4 Q No, no, no. I want your definition first. Before
5 we get into qualifying it --

6 A Okay.

7 Q -- I need your definition of testing.

8 A Okay. RCCs and PCPs both are interested in knowing
9 what area is covered by their paging signals.

10 Q Okay.

11 A And they're -- they can offer different types of
12 service. They don't normally makes this distinction, but you
13 want to be able at least to identify where in 90 percent of
14 the time, 90 percent of the locations, you're going to be able
15 to receive a, a paging signal from -- on a system. Now,
16 there's only one way that I know of and there's only one way
17 that I've practiced in my professional carrier and that is
18 typically, if I had to know this information with certainty,
19 was to go out in the field and measure it.

20 Q All right. Thank you, Mr. Peters. You've got to be
21 out there measuring when the testing's going on? Otherwise,
22 it doesn't make sense, does it?

23 A Well, I may have confused you, Mr. Joyce.

24 Q No, you haven't, Mr. Peters. That was your answer
25 and I know you're going to tell me that yes, you can put field

1 monitoring equipment out there and walk away from it.

2 A Yeah.

3 Q I understand that.

4 A Yeah. You're trying to pin down the fact that --
5 but in general you take a pager out and you wait for pages to
6 occur --

7 Q Yeah.

8 A -- and if they occur then you count them or not
9 count them.

10 Q Right. I mean, just so we compare it to another
11 type of testing, if I'm testing for oil deposits I drill a
12 hole. I got machine there that's going off 24 hours a day.
13 The operators walk away. There might not be anybody near that
14 oil rig for months on end. That's proper testing for oil, but
15 that's not proper testing for paging? Correct?

16 A I don't know, Mr. Joyce.

17 Q Because you don't know anything about testing for
18 oil?

19 A I don't even know what you're talking about.

20 Q I'm trying to establish what a proper test is for
21 paging, Mr. Peters, and I don't think it's too extreme to say
22 that for the most part the person involved in the testing in
23 paging has to be watching what's going on. Whether or not
24 he's actually looking at the test results as it's going on,
25 whether or not he's got the pager in his hand and waiting to

1 see if the signal hits it or even if he's doing off-air RF
2 monitoring, for the most part he's there, is he not?

3 A Are you talking about one person testing a paging
4 system or --

5 Q Or a couple of people.

6 A Now, that you've brought this up, yeah, you can have
7 automatic monitoring devices. I'm not suggesting that they
8 do. I'm just saying you asked me if it -- if they -- this is
9 the only way.

10 Q We're still trying to define what a test is before
11 we determine --

12 A Would you like me to explain? If you'll ask me the
13 question, I'd be pleased.

14 Q I did ask you and you told me that one thing you
15 need to test for is coverage, for instance. Correct?

16 A Indeed, that's true.

17 Q All right. And there are other times when the
18 system goes down and you need to test to find out what the
19 problem is, right?

20 A Yes.

21 Q All right. Now, when something breaks, you know,
22 you've got to be out there and inspecting it to see if the
23 test is working or not, right?

24 A Yeah. I think that's correct.

25 Q And even for coverage testing and Mr. Harrison

1 himself who is not technically sophisticated, he admits so,
2 even he said for a coverage test I'd drive home. I'd have the
3 beeper in my pocket and it would go off and I know how good
4 the coverage is? Correct?

5 A Indeed.

6 Q Okay. So there are some limits to testing?
7 Correct?

8 A Yes.

9 Q You find out if it works or if it doesn't? Correct?

10 A I cannot answer that question.

11 Q Why can't you answer that question?

12 A Because there is no answer that will fit into either
13 a yes or a no category, Mr. Joyce.

14 Q I understand that you're an engineer --

15 A There are --

16 Q -- Mr. Peters --

17 JUDGE CHACHKIN: Have you completed your response?
18 Go ahead, Mr. Peters.

19 MR. PETERS: There are numerable -- innumerable ways
20 to test. One of them is to put a pager in the pockets of a
21 number of people, let them roam out through neighborhoods and
22 find out if the testing exists at all. Another form of
23 testing --

24 MR. JOYCE: Let's stop.

25 MR. PETERS: -- with pagers in the same way --

1 BY MR. JOYCE:

2 Q Mr. Peters, let's stop with that one --

3 A Okay.

4 Q -- so that I can actually ask you a question and
5 understand what's going on here. Now, that test, for
6 instance, that you're talking about, to see if a group call
7 goes off? Okay.

8 A I'm sorry? That's not what I --

9 Q I'm sorry. Tell me again what the test was you
10 referred to.

11 A I just said you could put pagers in the hands of
12 people, let them roam out through neighborhoods and see if the
13 pagers go off.

14 Q Okay. And rather than getting abstract, let's put a
15 number on it because we heard Mr. Harrison say that they never
16 had more than 100 pagers. They had something between 0 and
17 100. Correct. And you're nodding your head yes. Say yes or
18 no.

19 A Yes.

20 Q That Greenup County folks, for instance, that
21 volunteer ambulance, he said they had 10 to 15 paging units?

22 A Yes.

23 Q Correct?

24 A Yes.

25 Q So let's say he wanted to determine by testing if

1 | this private carrier paging system would be able to activate
2 | all ten of those paging units. He could have ten different
3 | people put them in their pockets, drive to the four corners of
4 | Huntington and then call those pagers and see if they worked.
5 | Correct?

6 | A Yes.

7 | Q But now when the FCC was in Huntington that week in
8 | August if that was the test that was going on they would have
9 | been able to identify those specific ten pagers, would they
10 | not?

11 | A Who they? The FCC?

12 | Q Correct.

13 | A Only if they knew what the signals were that were
14 | being transmitted.

15 | Q We know because Mr. Harrison has told us that those
16 | were voice pages.

17 | A No.

18 | Q Correct?

19 | A The signals that the FCC inspectors measured were
20 | three two-tone pagers.

21 | Q I know.

22 | A It has nothing to do with --

23 | Q That's what I'm getting to, Mr. Peters.

24 | A -- 15 of them.

25 | Q I know. That's what I'm getting to. The range

1 testing that Mr. Harrison testified about for the Greenup
2 County folks those were voice pagers, were they not?

3 A Yes.

4 Q All right. And even Mr. McCallister said, "I was
5 refreq'ing them in my sleep," and he was talking about voice
6 pagers, too, was he not?

7 A Yes.

8 Q Okay. So that week that the FCC's engineers were in
9 town if Capitol was, indeed, legitimately testing to see if
10 those voice pagers were going off, in your expert opinion what
11 the FCC should have heard during that test would have been
12 voices, would it not?

13 A No, Mr. Joyce, absolutely not. They'd have heard
14 exactly what they heard except in this case they were only
15 talking about three pagers. They heard three signals. And a
16 tone and voice pager that doesn't have a voice message is a
17 two-tone pager and the next two-tone pager follows immediately
18 after the first two-tones. There is no voice message.

19 Q Mr. McCallister (sic), who said that they were
20 testing two-tone pages? You just made that up, didn't you?

21 A Mr. Walker --

22 Q No, no, no.

23 A -- said he -- what he --

24 Q I'm talking about the paging units that were
25 actually out on the street of Capitol's. Who said that those

1 were two-tone pages?

2 A It doesn't make any difference what they were.

3 Q I'm asking you where you got that from?

4 A I was talking about the signals that Mr. Walker
5 heard.

6 Q I know. I'm focusing -- we can get back to that if
7 you want. I'm focusing on the actual pagers that Capitol was
8 testing out there in the field according to their own people.

9 A The only --

10 Q Who told you that those were two- or even three-tone
11 pages?

12 A The only, the only pagers that I know anything about
13 -- the only paging tests that I know anything about from the
14 testimony were two-tone tests. Now, I think we were talking
15 about testing the paging system. Now, I may be confused, Mr.
16 Joyce.

17 Q I think you are, Mr. Peters. There's a difference,
18 isn't there, between what the FCC engineers heard and what the
19 testimony says those pagers meant to accomplish? Isn't there
20 a difference?

21 A I -- you -- I don't know.

22 Q You do know, though, because you're an engineer and
23 you know that a voice pager when you listen to it, even if
24 you're an FCC engineer and you're monitoring it in the field,
25 and we've heard people testify and I asked Mr. McCallister

1 this, you know what you're going to hear? You're going to
2 hear somebody's voice?

3 A No.

4 Q If it's a voice pager and if somebody is sending a
5 voice message the testimony was, "Even if my wife is asking me
6 if I want to bring some milk home, you're going to hear her
7 voice." Wasn't that the testimony?

8 A That's -- now, you've got it, Mr. Joyce.

9 Q All right. Thank you. I apologize if I confused
10 you. Now, that --

11 A When there is a voice message what you'll hear on
12 the channel will be voice.

13 Q Thank you.

14 JUDGE CHACHKIN: But that's not testing? Is that
15 what you're saying?

16 MR. PETERS: Yeah.

17 MR. JOYCE: I understand.

18 JUDGE CHACHKIN: Well, there's no evidence that
19 there were voice messages going over the air during the
20 testing.

21 MR. JOYCE: That's my point, Your Honor.

22 MR. PETERS: Okay.

23 BY MR. JOYCE:

24 Q Mr. Peters, if they were testing something, Capitol,
25 when the FCC's engineers were out there, it sure as heck

1 wasn't voice communications, was it?

2 A I don't recall any voice being mentioned anyplace.

3 Q All it was was a series of tones.

4 A Two-tone.

5 Q Okay. So that's not actually testing these voice
6 paging units that were out there, is it?

7 A If they were two-tone voice pagers, it --

8 Q But they weren't, Mr. Peters.

9 MR. HARDMAN: I object, Your Honor. That's
10 testimony and I -- that is not what the record shows. If Mr.
11 Joyce would ask this witness what kind of front porches are on
12 voice pagers, we might get to the bottom of this confusion.

13 BY MR. JOYCE:

14 Q I thought we had nailed this down, Mr. Peters. If
15 you as Capitol are providing voice pager service and you want
16 to test the range of that voice pager, wouldn't the proper
17 test be to pick up the phone, dial that paging unit and say my
18 name is Mike Raymond. This is a test page? Wouldn't that be
19 a proper way of doing it?

20 A Sure.

21 Q Okay. And if you want to test the range of that
22 paging unit, you tell Rusty Harrison get on your horse and
23 ride to the end of town and I'll do the same test? Correct?

24 A Yes, sir.

25 Q Okay. But what they were doing that week was not

1 that? Correct?

2 A That's my understanding.

3 Q Thank you. Now, if they're doing something other
4 than testing the actual pagers that they're selling on their
5 system, would it be fair to say that that might be excessive?

6 A I just can't make that jump, Mr. Joyce.

7 Q Let me ask it a different way, Mr. Peters, because
8 again we're trying to determine what's proper testing and
9 what's not. If I'm sharing a frequency with somebody and I'm
10 only providing one type of service but I continue to transmit
11 over and over again on that shared frequency to a completely
12 different type of paging unit that I'm not even marketing on
13 that frequency so that the signal is not going to any of my
14 people who are helping me test the system, it's just going out
15 there and clogging up the frequency, under that set of facts
16 wouldn't that be excessive?

17 MR. HARDMAN: I object, Your Honor. There's no
18 foundation in the evidence that there was a different type of
19 paging unit involved. Now, if Mr. Joyce would ask questions
20 designed to elicit whether there's any inconsistency between
21 the tones that he heard and voice paging or if he wants to ask
22 what kind of front porch there is on voice pagers, we can get
23 to the bottom of this.

24 BY MR. JOYCE:

25 Q Mr. Raymond has testified earlier in the week that

1 on their RCC system they sell all kinds of different pagers.
2 Isn't that true, Mr. Peters?

3 A I mean, I happen to know that it's true, but I
4 didn't hear it on his -- in his testimony.

5 Q So we can establish that a paging system is capable
6 of sending out a bunch of different signals whether or not you
7 actually have the paging units that can receive that signal?
8 Correct?

9 A Sure.

10 Q Okay. So the issue here is not what they were
11 capable of doing on their RCC system, but what they were
12 trying to do on their PCP system? Correct, Mr. Peters? I
13 mean, that's the case here.

14 Q If you say so, sir.

15 A Well, what you were hired to do was to look at their
16 PCP operations to see what they were selling and were they
17 operating it properly? Correct?

18 A No. I mean, I don't care what they're selling.
19 That's not a technical issue.

20 Q It is, though, Mr. Peters, to the extent that you
21 can't determine what's proper testing and what's not until you
22 know what the service is, right?

23 A There is not necessarily a, a link between what an
24 RCC will sell as a pager and what you use for testing. For
25 example, if you use a field intensity meter, you don't sell

1 field intensity meters but you use them for testing.

2 Q Can I --

3 JUDGE CHACHKIN: Please complete your answer.

4 You've asked the question. I want your answer.

5 MR. JOYCE: I apologize.

6 JUDGE CHACHKIN: All right.

7 MR. PETERS: There can be any number of pagers used
8 for testing. There can be pagers that have been specifically
9 modified to provide certain answers to issues. I'm afraid
10 that the -- that you're trying to narrow this thing down to a
11 specific thing and say oh, this is a test and that's not a
12 test. We don't -- there are a myriad of different ways, Mr.
13 Joyce, to test a system and to use equipment that's not
14 necessarily going to go to a customer.

15 BY MR. JOYCE:

16 Q Fine, Mr. Peters. Is it fair to say, and you're
17 going to have to humor me because I'm not an engineer, but you
18 can't activate a digital pager by speaking to it? Correct?

19 A True.

20 Q So I wouldn't test a digital pager by picking up the
21 phone and saying Dear Digital Pager, I got a message for Rick?
22 It sounds stupid, but it doesn't work that way, right?

23 A That's correct.

24 Q Okay. So you see, to that extent, Mr. Peters, that
25 you have to know what the end unit is capable of doing, it is

1 relevant to testing a paging system, isn't it?

2 A Of course.

3 Q Of course it is. But you made it seem like it was
4 ridiculous when I asked you earlier whether or not you knew
5 what kind of paging units Capitol was offering, but it's not
6 ridiculous. It's pretty relevant, isn't it, Mr. Peters?

7 A Yes.

8 Q Thank you. And we know why it's relevant, because
9 your testing has to be related to that type of paging unit --

10 A No.

11 Q for the test --

12 A Sorry. I --

13 Q For the most part, if you want to test if that pager
14 is going to go off, your test has to be related to that?

15 A You were talking about a company who is a
16 professional company that has been providing paging for 30
17 years, Mr. Joyce. They know how to go out and test a page and
18 a paging system and what they were doing to make those tests
19 is what they were doing to make those tests.

20 Q I'll accept that answer even though you said earlier
21 about the first answer you gave me today was that you didn't
22 think that Capitol knows how to test and you didn't think that
23 RAM knew how to test, did you, Mr. Peters?

24 A Yes. That's exactly what I said.

25 Q All right. But this answer is consistent with that

1 one?

2 A Yes, it is.

3 Q Okay.

4 (TAPE 5)

5 Q All right, Mr. Peters. So there's a relationship
6 between the type of test you do and the type of service that
7 you're offering in some cases? Correct?

8 A Let me digest that question for a moment. There's a
9 relationship --

10 Q It wasn't hardly well put. Let me rephrase it for
11 you. In the case of Capitol to figure out whether those voice
12 pagers would go off the test had to be appropriate for voice
13 paging?

14 A Yes.

15 Q Okay. I can't sit at a computer terminal and type
16 in a telephone number? That's an inappropriate way of testing
17 that pager because a digital signal is incompatible with a
18 voice pager, correct, roughly?

19 A Mr. Joyce, some, some voice pagers are digitally
20 actuated. That's why I'm having a problem.

21 Q Oh, I see. Okay. And, again, I don't know this
22 stuff as well as you do.

23 A I understand.

24 Q But if I were to tap a telephone number into my
25 telephone handset that wouldn't tell Rusty Harrison out in the

1 field necessarily that that voice pager is going to work?

2 Correct. Okay.

3 A In general, yes, that's correct.

4 Q And by the same token for these voice units, that
5 series of tones that the FCC's engineers were hearing
6 throughout the week, that didn't necessarily have anything to
7 do with testing a voice pager, did it?

8 A I don't know what it had to do with it.

9 Q That's a fair answer, Mr. Peters, very fair.

10 JUDGE CHACHKIN: We're going to recess for lunch
11 until 2:00.

12 (Whereupon, a lunch recess was taken from 12:43 p.m.
13 until 1:55 p.m.)

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1 A F T E R N O O N S E S S I O N

2 JUDGE CHACHKIN: All right.

3 MR. JOYCE: Your Honor, I would ask this document be
4 marked for purposes of identification as RAM Exhibit --
5 whichever my next exhibit number is.

6 JUDGE CHACHKIN: 4.

7 MR. JOYCE: 4?

8 JUDGE CHACHKIN: Yes.

9 (Whereupon, the document referred to
10 as RAM Technologies Exhibit No. 4 was
11 marked for identification.)

12 MR. JOYCE: May I approach the bench?

13 JUDGE CHACHKIN: Yes.

14 BY MR. JOYCE:

15 Q Mr. Peters, I've handed you a copy of FCC Rules
16 Section 90.405 which is labeled Permissible Communications. I
17 presume that as a private radio expert you're familiar with
18 this rule section?

19 A Yes, in a passing, in a passing manner I am. I've
20 read the rule.

21 Q And it's true that this rule section refers to what
22 stations licensed under Part 90 of the rules may transmit? Is
23 that fair to say?

24 A I -- yes, that's fair.

25 Q And Subsection 1 refers to any communication related